

FORM FOR USE IN APPLICATIONS

FOR HABEAS CORPUS UNDER 28 U.S.C. §2254

RECEIVED

ANTONIO HARDY

Name

186522

2007 DEC 21 A SKW
DEBRA P. HACKETT, CLERK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

Prison Number

Ventress Correctional Facility

P.O. Box 767 Clayton, Alabama 36106

Place of Confinement

United States District Court Middle District of Alabama

Case No.

(To be supplied by Clerk of U. S. District Court)

Antonio Demetrius Hardy, PETITIONER
(Full name) (Include name under which you were convicted)Warden J.C. Giles, RESPONDENT
(Name of Warden, Superintendent, Jailor, or authorized person
having custody of Petitioner)

and

THE ATTORNEY GENERAL OF THE STATE OF Alabama

Troy King, ADDITIONAL RESPONDENT

(if petitioner is attacking a judgment which imposed a sentence to be served in the future, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. §2255, in the federal court which entered the judgment.)

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN
STATE CUSTODY

INSTRUCTIONS--READ CAREFULLY

- (1) This petition must be legibly handwritten or typewritten and signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.

The Judicial Conference of the United States has adopted, effective 1/1/83, the 8-1/2 x 11 inch paper size standard for use throughout the federal judiciary and directed the elimination of the use of legal size paper. All pleadings, etc. filed after 12/31/82 must be on 8-1/2 x 11 inch paper.

- (2) Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) Upon receipt of a fee of \$5 your petition will be filed if it is in proper order.
- (4) If you do not have the necessary filing fee, you may request permission to proceed in forma pauperis, in which event you must execute the declaration on the last page, setting forth information establishing your inability to prepay the fees and costs or give security therefor. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (5) Only judgments entered by one court may be challenged in a single petition. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
- (7) When the petition is fully completed, the original and two copies must be mailed to the Clerk of the United States District Court whose address is P. O. Box 711, Montgomery, Alabama 36101

- (8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

*If you are proceeding in forma pauperis, only the original petition needs to be filed with the Court.

PETITION

1. Name and location of court which entered the judgment of conviction under attack Dallas County Circuit Court
2. Date of judgment of conviction 1-20-06 on Murder / 5-02-06 on unlawful distribution of controlled substance
3. Length of sentence Life / 20 split 5 Sentencing Judge Honorable Thomas R. Jones
4. Nature of offense or offenses for which you were convicted: Murder / unlawful distribution of a controlled substance
5. What was your plea? (check one)
 - (a) Not guilty
 - (b) Guilty
 - (c) Nolo contendere
 If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: I only plead guilty to the unlawful distribution of a controlled substance and I went to trial on the murder case

6. Kind of trial: (Check one)

- (a) Jury (**)
(b) Judge only ()

7. Did you testify at the trial? Yes () No (**) _____

8. Did you appeal from the judgment of conviction? Yes (**) No () _____

9. If you did appeal, answer the following:

- (a) Name of court Alabama Court of criminal appeal
(b) Result conviction affirmed by memorandum
(c) Date of result may 9,2006

If you filed a second appeal or filed a petition for certiorari in the Supreme Court, give details: Writ denied on the 7th day of December 2007

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal? Yes (*) No () _____

11. If your answer to 10 was "yes", give the following information:

- (a)(1) Name of court Dallas County Cirucit Court
(2) Nature of proceeding Rule 32 Petition

(3) Grounds raised Trial court was without jurisdiction to render Judgment or to impose sentence

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No (**) _____

(5) Result Dismissed

(6) Date of result November 4,2006

(b) As to any second petition, application or motion give the same information:

(1) Name of court Alabama COurt of Criminal Appeals

(2) Nature of proceeding Petition for a writ of mandamus

(3) Grounds raised 32.1 (a) 32.1(b) Ala.R.Crim.P.

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No (**) _____

(5) Result Denied by the higher courts

(6) Date of result August 28,2007

(c) As to any third petition, application or motion, give the same information:

- (1) Name of court Alabama Supreme court
(2) Nature of proceeding Writ of certiorari

(3) Grounds raised same as in the Rule 32 and mandamus

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No (*)

(5) Result Writ Denied

(6) Date of result December 7, 2007

(d) Did you appeal to the highest state court having jurisdiction the result of any action taken on any petition, application or motion:

- (1) First petition, etc. Yes (**) No ()
(2) Second petition, etc. Yes (*) No ()
(3) Third petition, etc. Yes () No ()

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not: No because of the limited amount of law library time and resources that were available to do my legal research although some of the post conviction petitions were appealed by the petitioner

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. As to all grounds on which you have previously exhausted state court remedies, you should set them forth in this petition if you wish to seek federal relief. If you fail to set forth all such grounds in this petition, you may be barred from presenting them at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted all your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

If you select one or more of these grounds for relief, you must allege facts in support of the ground or grounds which you choose. Do not check any of the grounds listed below. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure, [where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim].
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest, [where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim].
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea

Supporting FACTS (tell your story briefly without citing cases or law): I was told by my attorney Failes & my appeal attorney Blanchard McLeod that the judge had advised them that if I didnt give up my appeal which was pending take the plea to the distribution of a controlled substance that I would then recieve a life without parole sentence if I chose to proceed to trial and lost. Both attorneys William Failes & attorney Blanchard McLeod told me that I should accept the plea due to the fact that Attorney Failes not being prepared to defend Antonio nor having done any investigation into the state case. Once the defendant Antonio approached the Courthouse he was informed by the drug attorney that the judge wanted Hardy to withdraw an appeal on the Murder case which was totally unrelated to the case to which Hardy was to stand trial for that particular day, in order that the Judge would accept the plea on the distribution case or otherwise the judge would not accept the plea and that Hardy would have too proceed to trial and would be found guilty and would be given a sentence of life without parole by the judge on the case.

B. Ground two: Conviction obtained by use of a coerced confession

Supporting FACTS (tell your story briefly without citing cases or law): The state allowed the state witnesses to change their stories (statements) over and over numerous of times

C. Ground three: conviction obtained through prosecution withholding evidence favorable to the defense

Supporting FACTS (tell your story briefly without citing cases or law): After filing a motion for discovery and suppression motions the state didnt forward the requested evidence to the defense as requested. The state withheld over 12 hours of recorded statements and numerous of conflicting statements that were favorable to the defense of Hardy. The third day of trial Antonio and the defense attorney found out about the evidence that had been withheld, and asked for a continuance and a mistrial, which was denied by the court, and the court gave the defense only (2) hours to review 13 hours of recorded statements and prepare to continue trial. Both counsels objected to the two hour time frame to review the tapes, and after the viewing it was discovered that no one saw and could actually place Antonio with a pistol; or use an pistol. Defense Attorney Vaughn Russel took the stand for appellant review and testified that if the defense had been given enough time to prepare and review the evidence he believed the outcome would have been different and by not having the proper time to prepare he could defend me properly.

D. Ground four:

DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL

Supporting FACTS (tell your story briefly without citing cases of law): After advising Attorney Russel, Kyral Spars of the discovery motions too see what the state had or intended to use, the attorney failed to subpoena witnesses on my behalf. The attorney tried the case without a proper investigation into the state's case. The attorney didnt allow a liable witness to testify to see what the witness would say on the stand therefore he didnt call the witness to the stand to testify for the defense. This same witness later came forward with a statement that he was threatened by the victim family to say that Antonio Hardy had given him a weapon, the attorney failed to use the investigator that was at the defense disposal to check into the defense story. The attorney further waived the preliminary hearing without advising Hardy that he would be doing so, and further advised the defendant hardy to dismiss the appeal that he had pending on an unrelated charge so that the court would accept his plea of guilt to the unrelated charge or risk a life without sentence.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal state briefly what grounds were not so presented, and give your reasons for not presenting them:
-
-
-
-
-
-
-
-

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes () No ()

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:
(a) At preliminary hearing

- (b) At arraignment and plea
-

When Mr. Fails and Blanchard McLeod knew that the court didn't have jurisdiction over the Murder case due to being on appeal since the 21st of February. Mr. Fails and Blanchard McLeod coerced Antonio Hardy to give up his appeal to receive a plea agreement on a unrelated charge (drugs) a total different case on a unrelated offense to the underlying offense, by telling Hardy that he could and would receive a life without parole sentence if he didn't take the plea bargain.

GROUND 5

Denial of Appeal

Supporting facts : Mr Failes and the Judge (Jones) conspired together to stop Antonio HArdy from reaching the court of appeal due to the threatening Mr Hardy into withdrawing his appeal on aunrelated charge (Murder) that had already been appealed to the court of criminal appeal since the 21st of Febuary. Antonio filed a Rule 32 petition for relief and the court ruled on that petition without granting the informa pauperius which allowed him to have to go even longer without having the illegal sentence and conviction overturned. Antonio returned to court in the drug charges May 2, 2006 and was coerced into withdrawing his appeal when the court failed to obtain jurisdiction over the case anyway.

Ground 6:

Actual Innocence

Supporting facts:

Petitioner alleges that he is actual innocent of the charges that the court convicted him of because he never Murdered anyone. As it stands the record will reflect that at the investigation stage of the trial, before indictment the state's key witness alleged that he had not seen the petitioner with a weapon not once but twice the witness stated this. Then all of a sudden the witness came forward saying at trial that he had seen the petitioner with a wewpon a trial.

However at trial the petitioner failed to testify, and the state never adduced any physical evidence tending to place the defendant at the scense of the crime, nor any evidence that would prove beyond a reasonable doubt that the defendant actually committed the crime that the court s convicted him of. Petitioner has claimed the innoence since the day of his arrest and thus far does so.

Ground 7

The trial court was without jurisdiction to entertain the Rule 32 petition challenging (2) judgments in the state court for the offense(s) of Murder, and unlawful distribution of a controlled substance in a single petition in violation of clearly established Case Law of Alabama stating that only a single judgment can be challenged in a single petition.

Supporting facts .

Hardy filed a Rule 32 in which he challenged multiple judgments entered in a single court which was for the offenses of Murder under 13A-6-2, and Unlawful distribution of a controlled substance under §13-12-221 Code of Ala. 1975 whereas the Alabama Court of Criminal Appeal held that only one judgment per petition can be challenged by a petitioner. The court denied the petition and Hardy appealed and filed numerous of post trial motions, petitions, and other extraordinary writs challenging the trial court jurisdiction to render judgment and to impose sentence as stated in the instant habeas corpus.

- (c) At trial Mr. Vaughn Russell & Mrs. Kyrat Sparks
- (d) At sentencing Mr. Vaughn Russell & Mrs. Kyrat Sparks
- (e) On appeal Mr. Blanchard McLeod
- (f) In any post-conviction proceeding Mr. Blanchard McLeod
- (g) On appeal from any adverse ruling in a post-conviction proceeding: _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?
Yes () No (**) _____
17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
Yes () No (**) _____
- (a) If so, give name and location of court which imposed sentence to be served in the future: _____
 - (b) And give date and length of sentence to be served in the future: _____
 - (c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?
Yes () No () _____

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on 12-19-07.
(date)

Antonio Hardy

Signature of Petitioner